Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1977

No. 77-773

ANNE LAMONT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY MEMORANDA OF PETITIONER IN SUPPORT OF CERTIORARI PETITION

H. ELLIOT WALES
Attorney for Petitioner
122 East 42nd Street
New York, New York 10017
(212) 682-6806

10627
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Petitioner Anne Lamont submits this memoranda in reply to the answering brief of the United States.

I. It is important to note that the solicitor general has conceded that the trial court did err in ruling that the defendant's testimony was a precondition to the use of reputation evidence (page 3). The government attempts to minimize the impact of such error, but the solicitor general cannot argue, and does not argue, that the ruling is not a clear departure from the opinion of this Court in *Michelson v. United States,* 335 U.S. 469, 476 (1948). Nor does the government in any way attempt to answer the petitioner's contention that the Court of Appeals for the District of Columbia in *United States*

v. Shimon, 352 F.2d 449, 453, held clearly to the contrary that a defendant need not take the stand in order to offer evidence of good reputation.

Inasmuch as the petitioner Anne Lamont did not testify as a witness in her own trial, and did not offer any other witnesses on her behalf, the reputation witnesses which she offered became critical to her defense. Her defense at the trial all along was that she had engaged in the financial transactions, but she had acted at all times in good faith and without ill motive. In this context, it was important to her defense that the district court so instruct the jury and that her counsel be able to argue to the jury in summation, that reputation evidence alone may raise a reasonable doubt in the minds of the jury, and by itself warrant a verdict of acquittal.

By foreclosing the defense from offering evidence of good reputation, the district court improperly and prejudicially foreclosed the defense from securing such an instruction, and from making such an argument to the jury. Inasmuch as Anne Lamont did not testify at the trial, or offer any other witnesses, the decision of the district court to prohibit testimony of good reputation inhibited her from making a realistic and persuasive defense.

It was no substitute, as the solicitor general would like this Court to believe, that in cross examination of several government witnesses, defense counsel was able to elicit from these witnesses that Anne Lamont was indeed hard-working, diligent, and that she had compiled a good work record. None of this was a substitute for evidence that in the community in which she was known, had lived and had worked, Anne Lamont enjoyed a good reputation for truthfulness and honesty.

II. The solicitor general does not address himself to the fact

that in restricting the cross examination by the defense of the government witness John Barry, the district court made its ruling prior to the trial, and not in the midst of the cross examination of the witness Barry at the trial itself. As such, we are not dealing with the type of discretion normally afforded to a district judge, who must make a decision on the spur of the moment, and who bases his decision in large part upon the direct testimony and cross examination which is already heard up to that point. The district judge in this instance foreclosed the defense from inquiring as to the witness Barry with regard to the pressures and motives which may have been imposed upon him by the government as a result of his arrest. The district court made this ruling without having heard one word of testimony from Barry himself. It is just not adequate that District Judge Palmieri and District Judge Griesa may have believed that Barry was indeed a voluntary witness, after hearing oral argument by government counsel. At the very least, the district court should have heard the testimony of the witness Barry on this very point outside the presence of the jury. More appropriately, the district court should have allowed the jury, in its assessment of Barry as a witness, to determine for itself whether his credibility was in any way affected by the circumstances surrounding the arrest. It was error for the district court to remove this area of inquiry from the jury's consideration, and to take it upon itself to determine whether Barry had in fact been subjected or felt subjected to governmental pressure.

Inasmuch as this decision was made by the district court prior to trial, it should be construed strictly as a matter of law, and not accorded the same degree of discretion that otherwise is afforded to the ruling of a district judge within the context of a trial.

Dated:
New York, New York
February 14, 1978

Respectfully submitted,

s/ H. Elliot Wales
Attorney for Petitioner